

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DANIEL LEE WACHOWIAK,

Plaintiff,
v.
Case No. 18-cv-642-pp

DR. JEFFREY MANLOVE,

Defendant.

**SECOND ORDER DIRECTING PLAINTIFF TO RESPOND TO THE
DEFENDANT'S MOTION TO COMPEL (DKT. NO. 26)**

Plaintiff Daniel Lee Wachowiak is representing himself. He filed his complaint on April 23, 2018; at the time he filed the lawsuit, he was in custody at Waupun Correctional Institution. Dkt. No. 1. Magistrate Judge Nancy Joseph screened his complaint and allowed him to proceed on a claim that defendant Dr. Jeffrey Manlove refused him medical help for his foot infection in violation of the Eighth Amendment. Dkt. No. 18 at 4. On November 6, 2018, the clerk's office reassigned the case to this court, because one or both of the parties did not consent to the magistrate judge's authority to hear the case.

The Wisconsin Department of Corrections Inmate Locator Service web site shows that on November 13, 2018—about two weeks after the case was assigned to this court—the plaintiff was released onto extended supervision. <https://appsdoc.wi.gov/lop/detail.do>. The defendant answered the complaint on December 3, 2018, dkt. no. 22, and the certificate of service indicates that the defendant sent the answer to Waupun, dkt. no. 22-1. On December 10, 2018, the court issued a scheduling order, setting the deadline for completing discovery at April 8, 2019. Dkt. No. 23. The court contacted the plaintiff's state

probation officer and obtained a mailing address of 1019 Arlington Place, Stevens Point, WI 54481; that is where the court mailed the scheduling order, and it did not come back to the court as undeliverable.

The Wisconsin DOC inmate locator web site, however, shows that on April 11, 2019, the plaintiff was back in custody; since then he has been transferred to a number of facilities, and the web site shows that he has been at Columbia Correctional Institution since June 18, 2019.

<https://appsdoc.wi.gov/lop/detail.do>

On May 9, 2019, the defendant filed a motion asking the court to stay the May 10, 2019 dispositive motions deadline, because he had not received requested discovery from the plaintiff. Dkt. No. 24. The defendant sent the plaintiff's copy of that motion to Waupun, although the plaintiff had not been at Waupun for some six months. It is likely the plaintiff did not receive that motion. The court granted the motion, and extended the dispositive motions deadline to July 12, 2019. Dkt. No. 25. The court also indicated that if the defendant needed the court's assistance in getting the plaintiff to respond to discovery demands, the proper thing to do would be to file a motion to compel.

Id.

On May 22, 2019, the defendant did file a motion to compel the plaintiff to sign an authorization allowing defense counsel access to his medical records. Dkt. No. 26. The certificate of service indicates, however, that the defendant sent that motion to the plaintiff at Waupun, dkt. no. 26-1; again, the plaintiff has not been incarcerated at Waupun for some seven months.

On June 14, 2019, the court ordered the plaintiff to respond to the defendant's motion to compel, telling the plaintiff that if the court did not receive his response by the end of the day on July 3, 2019, it could dismiss the

case for failure to diligently pursue it. Dkt. No. 27 at 2. The court's order also noted that the plaintiff had not filed anything in the case since August 14, 2018. Id. at 1. The court, however, failed to check the inmate locator service, and did not realize that the plaintiff was back in custody. The court sent the order to the address on Arlington Place in Stevens Point. That order has not been returned to the court, but the court has no way to know whether the plaintiff received it.

It is the plaintiff's responsibility to notify the court when his address changes, and usually the court tells the parties that in the screening order. In this case, however, that information was left out of the screening order. The court does not know which documents the plaintiff has received, or whether he knows that it is his job to notify the court when he gets transferred or released. Because of the plaintiff's moves out of and into custody, and because the court neglected to notify the plaintiff that he needed to tell the court when he is moved or transferred, the court is going to give the plaintiff one more chance to respond to the defendant's discovery demands before dismissing the case.

The court **GRANTS** the defendant's motion to compel. Dkt. No. 26.

The court **ORDERS** that the defendant shall send the plaintiff a medical release for the plaintiff to sign. The court **ORDERS** that the defendant shall send that medical release to the plaintiff, inmate number 520974, at Columbia Correctional Institution.

The court **ORDERS** that if the plaintiff wants to proceed with his case, he must sign the medical release form and return it to the defendant's lawyer by **Friday, September 6, 2019.**

The court **ORDERS** that the dispositive motion deadline is **SUSPENDED**.

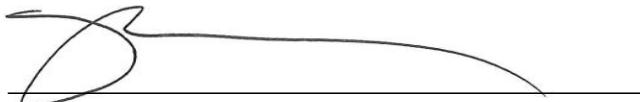
The court **ORDERS** that by the end of the day on **Friday, September 20, 2019**, counsel for the defendant must either notify the court that the plaintiff has provided the signed medical release form and indicate how much time the plaintiff needs to obtain and review the records, or notify the court that the plaintiff has not provided the signed release and ask for whatever relief the defendant believes is appropriate.

The court **ADVISES** the plaintiff that it is his responsibility to notify the court and defense counsel if he is transferred or released, and to keep the court and defense counsel updated with his current address.

The court **ADVISES** the plaintiff that if he does not provide defense counsel with the signed medical record release form by September 6, 2019, the court may dismiss the case without prejudice based on the plaintiff's failure to diligently pursue it. See Civil L.R. 41(c) (E.D. Wis.).

Dated in Milwaukee, Wisconsin this 9th day of July, 2019.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge